SPEECH

OF

JOHN P. HALE, OF NEW HAMPSHIRE,

IN THE SENATE OF THE UNITED STATES,

FEBRUARY 14, 1860.

The Senate resumed the consideration of the following resolutions, submitted by Mr. BROWN on the 18th of January:

"*Resolved*, That the Territories are the common property of all the States; and that it is 'the privilege of the citizens of all the States to 'go into the Territories with every kind or description of property recognised by the Constitution of the United States, and held under the 'laws of any of the States; and that it is the 'constitutional duty of the law-making power, 'wherever lodged or by whomsoever exercised, 'whether by the Congress or by the Territorial 'Legislature, to enact such laws as may be found 'necessary for the adequate and sufficient protection of such property.

"*Resolved*, That the Committee on Territories 'be instructed to insert, in any bill they may report for the organization of new Territories, a 'clause declaring it to be the duty of the Territorial Legislature to enact adequate and sufficient 'laws for the protection of all kinds of property, 'as above described, within the limits of the Territory; and that, upon its failure or refusal to 'do so, it is the admitted duty of Congress to interpose and pass such laws."

The pending question was on the amendment offered by Mr. WILKINSON, to strike out all after the word "resolved," where it first occurs, and insert:

"That the Territories are the common property of the people of the United States; that Congress has full power and authority to pass all 'laws necessary and proper for the government 'of such Territories; and that, in the exercise of 'such power, it is the duty of Congress so to 'legislate in relation to slavery therein, that the 'interests of free labor may be encouraged and 'protected in such Territories.

"*Resolved*, That the Committee on Territories 'be instructed to insert in any bill that may be 'reported for the organization of new Territories, 'a clause declaring that there shall be neither 'slavery nor involuntary servitude in such Territories, except in punishment for crime, where-'of the party has been duly convicted."

Mr. HALE. Mr. President, I am greatly obliged to the members of the Senate for their kindness in giving me the floor this morning. I have waited for it with some patience. I thought that an unusual spirit of supplication, as well as of resolution, pervaded the Senate to-day; for I think I never heard so many prayers [petitions] and so many resolutions uttered as have been here this morning; and I hope the Senate are in a suitable frame of mind to listen to what I may have to offer.

I have sat here, Mr. President, during this whole session, in comparative silence, while I have heard the State which I have the honor in part to represent, and the States lying in the same part of the country, and governed by the same political party, accused of almost every crime that a civilized State could commit; and the gentlemen who represent those States upon this floor not spared individually from any censure which has been so freely bestowed upon their States. But, sir, I shall not stop to repeat or recapitulate the various opprobrious epithets, either substantive or adjective, which have been heaped upon us, but shall proceed to address myself to the subject.

I do not recognise this Senate as a tribunal before which any State may be arraigned; I deny your jurisdiction entirely; but I do admit that there is another tribunal before which States and their representatives may be summoned, before which they may be arraigned, and

before whose jurisdiction they must plead, and whose judgment they must abide ; and that is the enlightened public sentiment of the country, of the age, of the world, and of coming time. From that tribunal, sir, there is no appeal ; and before that tribunal, invective and vituperation and declamation will not stand for argument.

These various accusations which have been brought against the States, the party, and the individuals, to whom I have referred, I think, have been summed up by the honorable Senator from Georgia, [Mr. Toombs ;] and as he seems to stand by the position which he has assumed in his speech, as the attorney general of his section of the country, to prefer the bill of indictment against us, I, though denying the jurisdiction of the tribunal to which he summons us here, will answer before the tribunal which I do acknowledge. While there was in the speech of that Senator much, very much, that was offensive, and, as I read the law, violative of the rules of parliamentary debate on this floor, I recognise in that speech one peculiar merit, and it gives me pleasure to acknowledge it. It was put in the shape of an argument, and in that it was peculiar. Most other gentlemen who have addressed themselves to the Senate, and through the Senate to the country, have seemed to think that invective, and accusation, and declamation, would stand in the place of argument ; but the Senator from Georgia so far recognises the necessity of establishing the positions which he takes and the accusations which he brings, that he has put his speech in the shape of an argument. He makes propositions, enunciates them, and then endeavors to sustain them. As I propose to devote some little attention to his speech, I have selected the charges—not all of them, but the substance of the charges—which I understand the Senator to bring against the States whom he arraigns, and their representatives. Though I do not read the extracts which I present exactly in the connection in which he placed them, I hope I shall not be accused of any want of candor by the manner in which I present them. He says :

" Hostility to the compact of Union, to the tie ' which binds us together, animates the bosoms ' and finds utterance in the tongues of millions ' of our countrymen, and leads to the habitual ' disregard of its plainest duties and obligations. ' Large bodies of men now feel and know that ' party success involves public danger ; that the ' result may bring us face to face with revolu- ' tion. Senators, we all feel it in this Chamber; ' we hear it proclaimed here every day ; we hear ' it proclaimed daily in the other branch of Con- ' gress ; we hear it from State Legislatures, from ' the pulpit and the press, and from popular as- ' semblies throughout the length and breadth of ' this broad land."

He goes further, and says :

" We are virtually in civil war, and these are ' the causes of it. It is known and felt on this ' floor. I feel and know that a large body of ' these Senators are enemies to my country. I ' know they and their associates have used the ' power which has been placed in their hands, ' by many of the States, to assail and destroy the ' institutions of these confederate States. I know ' that under the color of the liberty of speech, ' even in these halls, day by day, and year after ' year, they have thundered their denunciations ' against slavery and slaveholders, against con- ' federates and their institutions, and thus seek ' to apply the torch to our homesteads, and to ' desolate our land with servile and internecine ' war."

Again, he says :

" These public enemies are abolitionists, who ' have formed a coalition with all the waifs and ' strays—deserters of all former political par- ' ties—and, the better to conceal their real pur- ' poses, have assumed the name of the Republi- ' can party. This coalition has but one living, ' animating principle or bond of union, and that ' is, hatred of the people and institutions of the ' slaveholding States of this Union. This coali- ' tion has evinced, by its acts, its declarations, a ' fixed and determined purpose, in spite of the ' Constitution, in spite of solemn engagements to ' obey and maintain it, and in spite of all the ' obligations which rest on every member of every ' civilized State, to limit, to restrain, and finally ' to subvert, the institutions of fifteen States of ' the Union."

The Senator seemed to be aware that this was pretty high ground, and he admitted it. He said :

" Sir, I know these are strong charges ; I have ' not made them lightly. I speak in sorrow— [He is to be pitied for his sorrow, certainly]— ' I speak in sorrow, not in anger ; I make them ' with pain, not pleasure. I feel it a duty I owe ' to my country, to my whole country, to speak ' the truth plainly, that the people may know and ' perchance avert the public calamity. I feel ' deeply the obligation which rests upon me to ' sustain them by clear and irrefragable proofs ' before the Senate, the country, and the civilized ' world ; to that duty I now proceed."

Then the charges are made more specific :

" I charge, first, that this organization has an- ' nulled and made of none effect a fundamental ' principle of the Constitution of the United ' States, in many of the States of this Union, and ' has endeavored and is endeavoring to accom- ' plish the same result in all the non-slavehold- ' ing States.

" Secondly. I charge it with openly attempting ' to deprive the people of the slaveholding States ' of their equal enjoyment of, and equal rights in, ' the common Territories of the United States, as ' expounded by the Supreme Court, and of seek- ' ing to get the control of the Federal Govern- ' ment, with the intent to enable it to accomplish ' this result by the overthrow of the Federal ju- ' diciary.

" Thirdly. I charge that large numbers of per- ' sons belonging to this organization are daily ' committing offences against the people and ' property of these confederate States, which, by ' the law of nations, are good and sufficient ' causes of war even among independent States ; ' and Governors and Legislatures of States, elect-

'ed by them, have repeatedly committed similar 'acts."

This last charge is rather indefinite. It is not so specific as the other two; possibly, it was not intended to be so. It is like the close of a special demurrer. After you have set out specifically all your objections to the declaration, it is usual to add, in the conclusion, "and for that, the said declaration is, in other respects, illegal, informal, insufficient," &c.; and that seems to be the character of this third charge of the Senator. So much for the general. Now, sir, before that tribunal to which the Senator from Georgia has appealed, and the jurisdiction of which I acknowledge, I contend that a full and perfect and sufficient answer to every charge he has made, and to all the causes which he thinks should lead us into the civil war which he says exists, is to be found in the speech of the honorable Senator himself; and I will read it. He is describing the section of country in which he resides — the slaveholding States — and says of them:

"We occupy eight hundred and fifty thousand 'square miles of territory, stretching from Mason 'and Dixon's line to the Mexican frontier—the 'fairest, the most fertile, and the loveliest land 'that God ever gave to man; with noble rivers, 'bearing on their bosoms to the ocean the rarest 'and richest products of the earth; with capacious and commodious harbors, inviting the 'commerce of the world to take them to distant 'lands; with noble mountains, containing the 'richest and most useful ores and minerals of the 'earth; with valleys and plains, fertile and salubrious, inviting and rewarding the hand of 'industry; with forests unequalled in the beauty 'and value of their products; with more than 'twelve million inhabitants, prosperous and attached and loyal to their social system—a loyalty so devoted, that neither the treason nor 'seditious teachings to which I have referred, 'nor brute force, have been able since the Revolution to seduce one hundred men, of any class 'or condition of her society, from their allegiance to their homes and social system. Our 'people, after maintaining themselves in all the 'necessaries of life at home, already export over 'two hundred million dollars worth of their produce to all the great marts of the world. This 'country, capable of supporting a population 'larger than all Europe, is stronger in arms for 'her defence than all the five great Powers of 'Europe put together."

That is the physical condition of that country. Well, sir, how is it in relation to the action of the General Government? The Senator says:

"We do not charge these wrongs against the 'Federal Government. There has been no time, 'since its establishment, when it has been truer 'to its obligations, more faithful to the Constitution, than within the last seven years. Its executive and judicial departments have firmly 'maintained the fundamental law in relation to 'these great questions; and the legislative department has approximated the same standard 'nearer than at any other period of our history 'within the last forty years."

Then, sir, according to the Senator, here is the finest country on earth, and the best Government on earth, so far as the General Government is concerned. Now, how is it in relation to the State Governments? In relation to one of the great matters of complaint—the fugitive slave law—the Senator says:

"The constitutionality of this law has been 'maintained, as far as I know or believe, by every 'Federal court in this Union, and every State 'court also, except that of Wisconsin."

I will leave that, sir. Here, according to the Senator, is a country prosperous—prosperous beyond any country that ever existed on the face of the earth; a General Government more faithful to its obligations than it has ever been for forty years before; and in all the State courts, the judiciary, through which the laws are brought into practical application to the business transactions of social life—the judiciary of all these States, with one exception, affirming and confirming the constitutionality of that law, the non-execution of which he complains. Now, sir, what would he ask more? But he has made further complaint. I do not stand here to represent the free States of this Union; I do not claim to do so. They have their representatives. I claim only to represent one State in part, and that is New Hampshire; but New Hampshire did not escape from censure. The Senator will excuse me, however, for saying that I think he determined on declaring this state of civil war before he exactly knew the grounds on which his declaration of war was to be based; for I find in his speech, as I heard it delivered, and as it is reported in the *Globe*, that, in speaking of my State, he said:

"New Hampshire frees every fugitive from 'labor who may escape into her borders. The 'Constitution says she shall not. Her public 'men swear they will support the Constitution."

That was the way it was first pronounced—that New Hampshire freed every fugitive that escaped into her borders; but the charge is put in a little more modified form in the amended speech, which is published in pamphlet; and there it reads thus:

"New Hampshire frees every fugitive from 'labor who may escape into her borders, unless 'the act of reclamation be done by some officer 'of the United States, or other person, in the 'execution of legal process."

This is a very different affair from the charge in the way it first stood. I have taken pains to send to the library to get the volume of pamphlet laws of the State, in which the statute referred to is—the only statute New Hampshire has passed on the subject. It is a very short one, and I will read it; and then I will appeal, not only to public opinion and to the civilized world, but I will appeal to the Senator himself, and to every member of the body, to see if the text sustains the charge. It is "An act to secure freedom and the rights of citizenship to persons in this State," and is comprised of only four sections. The only section which undertakes to free any negro at all is the second one, and it is this:

"Any slave who shall come, or be brought ' into, or be in this State, with the consent of ' his master or mistress, or who shall come, or ' be brought into, or be in this State, involun- ' tarily, shall be free."

That is the whole of it. There is no attempt to free any fugitive, and, if the Senator had read the statute carefully, he would have seen that there was a very careful exception in behalf of persons who were undertaking to reclaim fugitives under the fugitive slave law—more so, in fact, than I might have supposed our people would have done. I will read the third section:

"SEC. 3. Every person who shall hold or at- ' tempt to hold, in this State, in slavery, or as a ' slave, any person, of whatever color, class, or ' condition, in any form or under any pretence, ' or for any length of time, shall be deemed ' guilty of felony, and, on conviction thereof, ' shall be confined to hard labor for a term of ' not less than one nor more than five years: ' *Provided*, That the provisions of this section ' shall not apply to any act lawfully done by any ' officer of the United States, or other person, in ' the execution of any legal process."

I leave that there; but let me say a single word in relation to the legislation of which so much complaint is made. We have in our States a small body of colored men. In my own State, so far as I know, there is no distinction in regard to personal or political rights growing out of a man's complexion, and there never was; and the only place in which there was any condition was where the qualifications of those who were liable to be enrolled in the militia were taken from the statute of the United States, and we enrolled none but white persons in the militia. Aside from that, they have the same rights with any of us. They testify in courts; they vote at the ballot-box; and they have, so far as I know, just exactly the same political rights that I have, and I hope they will always have them; and I do not know that we are guilty of any disloyalty to anybody in doing it. We have but few of them—very few. There was an event in the history of my State, not many years ago, which turned attention to the unprotected condition of this unfortunate class, even before the decision of the Supreme Court of the United States in the Dred Scott case. In the year 1837, a case of kidnapping, for the first time, came before the courts of the State of New Hampshire, and the statement of that case I will read:

"Upon the trial, it appeared that on the 24th ' of February, 1835, the overseers of the poor of ' the town of Exeter placed said Swett, who was ' a mulatto boy, about six years of age, and one ' of the paupers of said town, with the defend- ' ant, who resided in Sanbornton, as an appren- ' tice; and the defendant at that time executed ' a written memorandum, by which he agreed ' that he would take said Swett, to have and to ' hold him by an indenture to be made by the ' overseers, in case he should use the boy well; ' and that he would clear the town from all ex- ' pense that might accrue, by not returning the ' boy to the poor-house within one year.

"It did not appear that any indenture had ' ever been executed.

"On the 24th of October, 1836, the defendant ' carried the boy from his house, in Sanbornton, ' to the house of one Jonathan Bennett, in North- ' wood, a distance of forty miles, and left him ' there. He at that time told the wife of said ' Jonathan that the boy was given to him by the ' overseers of the poor of Exeter; that he had ' sold him to one Samuel Bennett, of Alabama, ' a brother of said Jonathan, until he should be ' twenty-one years old, for the sum of fifty dol- ' lars, and requested her to pay him that sum ' for said Samuel; and he further said, that said ' Samuel had paid him five dollars for bringing ' him from his house to Northwood, and request- ' ed her to say nothing about the sale."—*The State* vs. *Rollins*, *New Hampshire Reports*, *vol.* 8, *p.* 551.

I remember very well the circumstances of that case. It occasioned a very great feeling at the time. A trial was had; and the facts which I have now read from the report of the case were found to be true; and so careless, if I may so say, had the State of New Hampshire been in regard to this subject, that it was found, as late as 1837, that she had no statute even against kidnapping. The facts were found to be true, and the perpetrator of this wrong was left to such judgment as the court might inflict upon him under the provisions of the common law.

At that time, although it produced a good deal of excitement in my State, it produced no sort of excitement against anybody except the man who had done it; and I believe to-day that we should have had just exactly as much right and as much reason to charge that kidnapping of that boy in New Hampshire, in 1837, upon the slave States of this Union, as the slave States have to charge the raid of John Brown into Virginia upon the free States. I do not suppose that there was a man in the State of Virginia who knew of it. Neither do I suppose that a man in the State of New Hampshire knew about John Brown. And, sir, further than that, if we were to adopt the reasoning you have adopted on this occasion, and say that, if you did not know it, it was the direct and legitimate consequence of the doctrines you preach, I might use the same argument to you, and say that the kidnapping of this boy was the natural and legitimate result of the doctrines which you preach; because the Supreme Court have decided that these persons have no rights which white men are bound to respect; and the natural and legitimate result of such a doctrine as that will be to take and to make slaves of a class who have no rights that white men are bound to respect. But, sir, we do no such thing. We did not believe, and we do not believe now, and never have believed, that there was anybody responsible for that kidnapping, except the party upon trial, and against whom the offence was proved.

Mr. BENJAMIN. Will the Senator pardon me a moment?

Mr. HALE. Certainly.

Mr. BENJAMIN. Will the Senator be kind enough to state when and where the Supreme

Court of the United States, or any judge of it, ever said that colored people had no rights that white people were bound to respect?

Mr. HALE. Yes, sir; in the Dred Scott case.

Mr. BENJAMIN. I thought that calumny had been exploded long ago; but I will inform the Senator that, if he will take the trouble to read that decision, he will find that the only place in which that sentence is used, is in a passage of the opinion of the Chief Justice, where he says, in making a historical summary, that in former times it was supposed that these unfortunate people had no rights that white people were bound to respect. He is there giving a historical summary of the condition in which these people were prior to the Revolution; and there is not a syllable in the entire opinion having the remotest bearing upon, or authorizing any such construction to be put upon, the language of the Court or the Chief Justice. If the Senator will read it, I shall be glad, if it is at hand. I am sure it is so.

Mr. HALE. There has been more difficulty in ascertaining what the Dred Scott decision actually decided, than there was about a famous letter that was written a good many years ago by the Secretary of State to a distinguished member of this body now. I refer to what is familiarly called the Nicholson letter. We all know that there were more constructions put upon that, than upon any disputed text of Scripture in the world; and I confess I do not know to-day what is the true faith upon that letter. I have heard so much said about this Dred Scott decision, that I do not know what was decided. I suppose, literally and judicially, there was nothing decided in it that anybody is bound to respect, except the fact that Dred Scott had no right to bring his action there; and everything else that the Court undertakes to decide is extra-judicial, and brought in improperly and extra-judicially, and ought not to have been there; but——

Mr. BENJAMIN. If the Senator will permit me, what I assert is, that, on a careful reading of that decision, there is nothing, in opinion, or decision, or declaration, by any judge, stating that to be his opinion, under any circumstances.

Mr. HALE. I will read it. I remember a very wise maxim of Lord Coke, that I learned when I was a boy. He said, "One man averreth one thing, and another another; but the verity is the record." I have got the record here, and I will read it. The Chief Justice, in his opinion in the Dred Scott case, says:

"It is difficult, at this day, to realize the state
'of public opinion in relation to that unfortunate
'race, which prevailed in the civilized and en-
'lightened portions of the world at the time of
'the Declaration of Independence, and when the
'Constitution of the United States was framed
'and adopted. But the public history of every
'European nation displays it in a manner too
'plain to be mistaken.

"They had, for more than a century before,
'been regarded as beings of an inferior order, and
'altogether unfit to associate with the white race,
'either in social or political relations; and so far
'inferior, that they had no rights which the white
'man was bound to respect."

That is the basis of the argument, the historical basis of argument which the Chief Justice lays down to justify him and the Court in the conclusion to which they come. I know very well, according to my reading of the Dred Scott decision, that that is not law, neither is any part of it law—I mean any part of it matter that was legally before the Court, except the question which arose on the plea in abatement, whether Dred Scott had a right to bring an action in that Court; and in that I am supported by some of the best lawyers on that bench. I am willing to leave to any tribunal whether I am sustained, or not, in the declaration I have made.

But, sir, I leave that part of the speech of the Senator from Georgia, which relates to the action of my own State, where I put it; and I now proceed to another part, that is to be found not only in the speech of the Senator from Georgia, but in almost every other speech that has been made on this subject; and that is, a most solemn appeal to us to reverence and abide by and obey the construction of the Constitution which they give, because it has been solemnly decided to be the law by the Supreme Court of the United States. The State of the honorable Senator from Wisconsin [Mr. DOOLITTLE] was reprimanded, for having the audacity to send Senators here, after the Supreme Court of that State had decided that your fugitive slave law was unconstitutional. Now, sir, I desire to meet that question right here, distinctly and unequivocally and plainly. I have heard this appeal made over and over again, I think, by nearly every gentleman who has addressed the Senate from the other side of the Chamber—this appeal to the Supreme Court; and by nobody with more emphasis than by the Senator from Georgia. If the State of Wisconsin is guilty of audacity in sending Senators here after that State has decided that statute to be unconstitutional, I will appeal to the honorable Senator himself. I will waive the enlightened public sentiment of mankind; but I will take his opinion upon what he thinks of the State of Georgia, after I shall have read the record which I propose to read in reference to that State and the Supreme Court of the United States; and in doing it, let me not be misunderstood. I am not going to intimate that the State of Georgia was not right; I declare that the bias of my mind is, that she was; but when I read that history, I will only say that, while I shall listen with all patience to anybody who chooses to lecture me on reverence for the Supreme Court, I will ask the man who undertakes to lecture me, if he has read the solemn judicial decision of his own State, in which, as late as 1854, the Supreme Court of that State boasted that they had treated the decision of the Supreme Court of the United States with profound contempt?

Sir, the doctrine about the infallibility of the Supreme Court of the United States is new from that side of the House; it is a very new doctrine. It does not surprise me; but it does surprise me, coming from that side of the House. What is the history of the Democratic party in regard to the Supreme Court of the United

States? Here I will state it in brief, and I will come to the proof. From the time that Mr. Jefferson came into power, down to the time that the Supreme Court struck their flag, there was an open and undisguised hostility, on the part of the Democratic party, against the Supreme Court of the United States, promulgated by her most prominent men—I know over and over again by Jefferson; made the basis of his own action by Jackson, and proclaimed upon the floor of the Senate by Buchanan.

The Supreme Court of the United States decided that a Bank of the United States was constitutional; but I believe that the very next time that that party held a national convention—or if it was not immediately after that, it was very soon after—their reverence for the Supreme Court was so great that they incorporated it as one of the standing articles of their faith into that platform, that Congress had not power to incorporate a Bank of the United States, notwithstanding the Supreme Court had so decided. To show the pertinacity with which they set up the authority of Democratic caucuses against the United States Supreme Court, they have kept that in, years and years after the United States Bank is dead and buried, and its memory rotten; but still the Democratic party cannot hold a convention, even as late as 1856 in Cincinnati, but they put in a resolution against a United States Bank, and against the power of Congress to charter one. Why, sir, that has been about all the Democracy we have had down East for a long time, [laughter,] hostility to the United States Bank. Appeal to them upon any other issue, and they could not listen to you until they had gone back and fired a volley over the dead carcass of the United States Bank. That is the way they manifested their reverence for the opinion of the Supreme Court.

But, sir, I want to show you how Jefferson talked on this subject. I read from the sixth volume of Jefferson's Works, page 461. I do not know but that I have made some of these quotations here before. Mr. Jefferson, in a letter dated on the 11th of June, 1815, to Mr. W. H. Torrance, said:

"The second question, whether the judges are 'invested with exclusive authority to decide on 'the constitutionality of a law, has been heretofore a subject of consideration with me in the 'exercise of official duties. Certainly, there is 'not a word in the Constitution which has given 'that power to them, more than to the executive 'or legislative branches. Questions of property, 'of character, and of crime, being ascribed to 'the judges, through a definite course of legal 'proceeding, laws involving such questions belong, of course, to them; and as they decide 'on them ultimately, and without appeal, they 'of course decide *for themselves*. The constitutional validity of the law or laws again prescribing executive action, and to be administered by that branch ultimately, and without 'appeal, the Executive must decide for *themselves* 'also, whether, under the Constitution, they are 'valid or not. So, also, as to laws governing 'the proceedings of the Legislature; that body 'must judge *for itself* the constitutionality of the 'law, and equally without appeal or control from 'its co-ordinate branches."

In the seventh volume of Jefferson's works, page 134, in a letter written to Judge Roane, he says:

"In denying the right they usurp of exclusively explaining the Constitution, I go further 'than you do, if I understand rightly your quotation from the Federalist, of an opinion 'that 'the judiciary is the last resort in relation *to the* 'other departments of the Government, but not in 'relation to the rights of the parties to the compact under which the judiciary is derived.' If 'this opinion be sound, then, indeed, is our Constitution a complete *felo de se;* for, intending 'to establish three departments, co-ordinate and 'independent, that they might check and balance one another, it has given, according to 'this opinion, to one of them alone, the right to 'prescribe rules for the government of the others, and to that one, too, which is unelected by, 'and independent of, the nation; for experience 'has already shown that the impeachment it has 'provided is not even a scarecrow; that such 'opinions as the one you combat, sent cautiously out, as you observe, also, by detachment, not 'belonging to the case often, but sought for out 'of it, as if to rally the public opinion beforehand to their views, and to indicate the line 'they are to walk in, have been so quietly passed 'over as never to have excited animadversion, 'even in a speech of any one of the body intrusted with impeachment. The Constitution, on 'this hypothesis, is a mere thing of wax in the 'hands of the judiciary, which they may twist 'and shape into any form they please. It should 'be remembered, as an axiom of eternal truth in 'politics, that whatever power in any Government is independent, is absolute also; in theory, only, at first, while the spirit of the people 'is up, but in practice as fast as that relaxes. 'Independence can be trusted nowhere but with 'the people in mass. They are inherently independent of all but moral law. My construction 'of the Constitution is very different from that 'you quote. It is, that each department is truly 'independent of the others, and has an equal 'right to decide for itself what is the meaning 'of the Constitution in the cases submitted to 'its action; and especially where it is to act 'ultimately and without appeal. I will explain 'myself by examples which, having occurred 'while I was in office, are better known to me, 'and the principles which governed them."

He then goes on to quote the sedition laws, which he says the judiciary pronounced to be constitutional, and sentenced the men to prison; but he adjudged them unconstitutional, and turned them out; and also the famous case of Marbury *vs.* Madison, where a justice of the peace had been appointed by John Adams before he went out of office, and the Supreme Court was applied to for a *mandamus* to compel the Secretary to deliver the commission, and Jefferson said he adopted a different rule, and was always vexed that that was quoted as law, for it was no law, but mere usurpation. In the same volume,

on page 192, in his letter to Thomas Ritchie, December 25, 1820, he is a little more explicit. He says:

"The judiciary of the United States is the 'subtile corps of sappers and miners constantly 'working under ground to undermine the found-'ations of our confederated fabric. They are 'construing our Constitution from a co-ordina-'tion of a general and special Government to a 'general and supreme one alone. This will lay 'all things at their feet; and they are too well 'versed in English law to forget the maxim, '*'boni judicis est ampliare jurisdictionem.*' We 'shall see if they are bold enough to take the 'daring stride their five lawyers have lately 'taken. If they do, then, with the editor of our 'book, in his address to the public, I will say, 'that 'against this every man should raise his 'voice,' and more, should uplift his arm. Who 'wrote this admirable address? Sound, lumi-'nous, strong, not a word too much, nor one 'which can be changed but for the worse. That 'pen should go on, lay bare these wounds of 'our Constitution, expose the decisions *seriatim*, 'and arouse, as it is able, the attention of the 'nation to these bold speculators on its patience. 'Having found, from experience, that impeach-'ment is an impracticable thing, a mere scare-'crow, they consider themselves secure for life; 'they skulk from responsibility to public opin-'ion, the only remaining hold on them, under a 'practice first introduced into England by Lord 'Mansfield. An opinion is huddled up in con-'clave, perhaps by a majority of one, delivered 'as if unanimous, and with the silent acquies-'cence of lazy or timid associates, by a crafty 'chief judge, who sophisticates the law to his 'mind by the turn of his own reasoning. A 'judiciary law was once reported by the Attorney 'General to Congress, requiring each judge to 'deliver his opinion *seriatim* and openly, and 'then to give it to the clerk to be entered in the 'record. A judiciary, independent of a King or 'Executive alone, is a good thing; but inde-'pendence of the will of the nation is a sole-'cism, at least in a republican Government."

Again, in a letter to Mr. Thweat, dated January 19, 1821, (same volume, page 198,) he says:

"The legislative and executive branches may 'sometimes err, but elections and dependence will 'bring them to rights. The judiciary branch is the 'instrument which, working like gravity, with-'out intermission, is to press us at last into one 'consolidated mass. Against this I know no 'one who, equally with Judge Roane himself, 'possesses the power and the courage to make 'resistance, and to him I look, and have long 'looked, as our strongest bulwark. If Congress 'fails to shield the States from dangers so palpa-'ble and so imminent, the States must shield 'themselves, and meet the invader foot to foot."

Again, (in the same volume, page 403,) in a leter to Edward Livingston, he says:

"One single object, if your provision attains 'it, will entitle you to the endless gratitude of 'society—that of restraining judges from usurp-'ing legislation. And with no body of men is 'this restraint more wanting than with the judges 'of what is commonly called our General Gov-'ernment, but what I call our foreign depart-'ment. They are practicing on the Constitution 'by inferences, analogies, and sophisms, as they 'would on an ordinary law. They do not seem 'aware that it is not even a *Constitution* formed 'by a single authority, and subject to a single 'superintendence and control, but that it is a 'compact of many independent powers, every 'single one of which claims an equal right to 'understand it, and to require its observance. 'However strong the cord of compact may be, 'there is a point of tension at which it will 'break. A few such doctrinal decisions as bare-'faced as that of the Cohens, happening to bear 'immediately on two or three of the large States, 'may induce them to join in arresting the march 'of Government, and in arousing the co-States to 'pay some attention to what is passing, to bring 'back the compact to its original principles, or to 'modify it legitimately by the express consent of 'the parties themselves, and not by the usurpa-'tion of their created agents. They imagine they 'can lead us into a consolidate Government, 'while their road leads directly to its dissolu-'tion. This member of the Government was at 'first considered as the most harmless and help-'less of all its organs. But it has proved that 'the power of declaring what the law is, *ad 'libitum*, by sapping and mining, slyly, and with-'out alarm, the foundations of the Constitution, 'can do what open force would not dare to at-'tempt. I have not observed whether, in your 'code, you have provided against caucusing ju-'dicial decisions, and for requiring judges to 'give their opinions *seriatim*, every man for him-'self, with his reasons and authorities at large, 'to be entered of record in his own words. A 'regard for reputation, and the judgment of the 'world, may sometimes be felt, where conscience 'is dormant, or indolence inexcitable. Expe-'rience has proved that impeachment in our 'forms is completely inefficient."

In a letter to Mr. Adams, dated September 11, 1804, to be found in the fourth volume of Jefferson's works, page 561, he says:

"You seem to think it devolved on the judges 'to decide on the validity of the sedition law. 'But nothing in the Constitution has given them 'a right to decide for the Executive, more than 'to the Executive to decide for them. Both mag-'istrates are equally independent in the sphere 'of action assigned to them. The judges, be-'lieving the law constitutional, had a right to 'pass a sentence of fine and imprisonment, be-'cause the power was placed in their hands by 'the Constitution. But the Executive, believing 'the law to be unconstitutional, were bound to 'remit the execution of it, because that power 'has been confided to them by the Constitu-'tion."

These were the doctrines of Jefferson in earlier days. Now, sir, I will read to you the opinion of a later authority—the opinion of General Jackson. It may be found on page 438 of the Senate Journal for the first session of the Twenty-second Congress, and is in these words:

"If the opinion of the Supreme Court covered

'the whole ground of this act, it ought not to 'control the co-ordinate authorities of this Gov- 'ernment. The Congress, the Executive, and 'the Court, must each for itself be guided by its 'own opinion of the Constitution. Each public 'officer, who takes an oath to support the Con- 'stitution, swears that he will support it as he 'understands it, and not as it is understood by 'others. It is as much the duty of the House of 'Representatives, of the Senate, and of the Pres- 'ident, to decide upon the constitutionality of 'any bill or resolution which may be presented 'to them for passage or approval, as it is for the 'supreme judges, when it may be brought be- 'fore them for judicial decision. The opinion 'of the judges has no more authority over Con- 'gress than the opinion of Congress has over the 'judges; and, on that point, the President is in- 'dependent of both. The authority of the Su- 'preme Court must not, therefore, be permitted 'to control the Congress or the Executive when 'acting in their legislative capacities, but to 'have only such influence as the force of their 'reasoning may deserve."

General Jackson was aware that he had taken a strong position in that case, and he closes, with a solemn appeal. He says:

"I have now done my duty to my country. If 'sustained by my fellow-citizens, I shall be 'grateful and happy; if not, I shall find, in the 'motives which impel me, ample grounds for 'contentment and peace."

Mark, that this message was dated the 10th of July, 1832. The Presidential election was coming on. Jackson threw out these sentiments. There was a collision at that time between your Federal Court and the Executive of the State of Georgia, to which I shall refer presently; but in this connection there is a document which bears on this matter. This message of General Jackson was written on the 10th of July, 1832. In the fall of that year he was re-elected by a tremendous majority. Soon after that, certain individuals, who had been contesting the power of Georgia to imprison them, contrary to a decision of the Supreme Court of the United States, abandoned that controversy, and appealed to the magnanimity of the State of Georgia for release from their penitentiary, and they were released; and in the proclamation of the Governor of that State, setting forth the reasons which induced him to pardon these prisoners, he says:

"And also taking into view the triumphant 'ground which the State finally occupies in re- 'lation to this subject, in the eyes of the nation, 'as has been sufficiently attested through vari- 'ous channels, especially in the recent over- 'whelming re-election of President Jackson, the 'known defender of the rights of the State 'throughout this controversy."

I put that in to show that at that time the Democratic party, with General Jackson at their head, were fighting this battle on one side, and the Supreme Court on the other; and the Governor of Georgia, in letting these individuals out of the penitentiary of the State, in a solemn proclamation of his, put in, as one of the causes moving him to do it, that by the re-election of General Jackson the position which the State of Georgia had assumed had been sanctioned and sustained by the people, or by the Democratic party, which at that time made an overwhelming majority of the people, and re-elected General Jackson. It may add some confirmation to the authority of this opinion of General Jackson, thus solemnly put forth, if we reflect who were members of the Cabinet at that time. I believe the present Chief Justice of the United States was one. The present Secretary of State was a member of his Cabinet, and I think Edward Livingston was, also, at the time this doctrine was thus put forth.

In regard to this matter of the authority of the Supreme Court of the United States, I want to give a little history, as it is given by one of the judges of the Supreme Court of Georgia, of the manner in which this doctrine has been viewed in that State. I read from the fourteenth volume of Georgia Reports, by T. R. R. Cobb, and the case is the case of Padelford, Fay, & Co., *vs.* the Mayor and Aldermen of the city of Savannah. It is a very learned opinion. It goes over the whole history of the discussions as to the formation of the Constitution, and then it comes to Georgia. I must crave the patience of the Senate while I read this, for it is an instructive history. Said Judge Benning:

"Let us pass to Georgia. We have no evi- 'dence of the doings of the convention of this 'State which ratified the Constitution, except 'simply the ratification itself. But we have nu- 'merous acts and declarations of the State, some 'of them almost contemporaneous with the rati- 'fication, which tell the mind of Georgia, on the 'subject, more emphatically, if possible, than the 'mind of any of the other States is told by the 'records of their conventions. These I shall 'call to my aid.

"The first act of Georgia to which I shall re- 'fer will be her denial of jurisdiction to the 'Supreme Court of the United States, in a case 'which was brought against her in that Court. 'It was the case of Chisholm, executor, against 'Georgia.

"This action was instituted in August term, '1792. On the 11th of July, 1792, the marshal 'for the district of Georgia made the following 'return:

"'Executed as within commanded: that is to 'say, served a copy thereof on his Excellency 'Edward Telfair, Esq., Governor of the State of 'Georgia, and one other copy on Thomas P. 'Carnes, Esq., the Attorney General of said State.

"'ROBERT FORSYTH, *Marshal.*'

"Georgia did not appear in the case. The 'plantiff then moved, that unless the State, after 'reasonable notice of that motion, should cause 'an appearance to be entered for her, or show 'cause to the contrary, judgment should be en- 'tered against her, and a writ of inquiry of 'damages be awarded." * * *

"So the Court '*Ordered*, that unless the said 'State shall either in due form appear, or shew 'cause to the contrary, in this Court, by the first 'day of next term, judgment, by default, shall

'be entered against the said State.' The reporter adds, in a note, that, 'in Feburary term, '1794, judgment *was* rendered for the plaintiff, 'and a writ of inquiry awarded. The writ, however, was not sued out and executed; so that 'this cause, and all of the other suits against 'States, were swept at once from the records of 'the Court, by the amendment of the Federal 'Constitution.'

"Georgia treated the Court with contempt, in 'respect to this case. Her position was, that 'the Court had no jurisdiction of *her* as a *party*."—*Georgia Reports*, vol. 14, p. 479.

He goes on to say:

"Now, in this position, Georgia triumphed. 'First, the judgment against her fell dead. The 'plaintiff in the case, himself, did not so much 'as have his writ of 'inquiry' executed. He obtained the judgment, by default, in 1794. Nothing more was done in the case until 1798, after 'the amendment of the Constitution had been 'made, when this and other similar cases were ''swept from the records.'" * * *

"The next act to which I shall refer is the 'denial, by Georgia, of jurisdiction to the Supreme Court in the cases of Worcester and Butler *vs.* Georgia, to be found reported in 6 Peters, '5, 15. The question in those cases was, whether 'an appeal lay from the superior courts of Georgia to the Supreme Court of the United States; 'whether, in other words, the twenty-fifth section 'of 'the act to establish the Judicial Courts of 'the United States,' passed in 1789, which gives 'to the Supreme Court of the United States the 'power of revising and reversing judgments and 'decrees of State courts, is constitutional?

"In these cases, Worcester and Butler were 'indicted, convicted, and put in the penitentiary, 'for violating the laws of Georgia, which forbade 'white persons to reside within the Cherokee 'nation of Indians without the permission of the 'Governor, and without having taken an oath 'to support and defend the Constitution and 'laws of Georgia, and uprightly demean themselves as citizens thereof. The case occurred 'in the Superior Court of Gwinnett county. A 'writ of error was issued from the Supreme 'Court of the United States, on the application 'of the defendants, to the judges of the Superior 'Court for the county of Gwinnett. The clerk 'of that court returned a transcript of the cases 'to the Supreme Court of the United States. But 'the judges of the court had nothing to do with 'this act of the clerk. He did not recognise the 'right of the Supreme Court to issue the writ.

"The Supreme Court of the United States, by 'Marshall, C. J., said that it was 'too clear for 'controversy, that the act of Congress by which 'this court is constituted has given it the power, 'and of course imposed on it the duty, of exercising jurisdiction in the case.'

"Accordingly, that court took jurisdiction, and ''adjudged that the judgment rendered in the 'premises by the said Superior Court of Georgia,' 'whereby the said Samuel A. Worcester is sentenced to hard labor in the penitentiary of 'Georgia, ought to be reversed and annulled; ''and further' adjudged that said judgment 'be, 'and hereby is, reversed and annulled;' and 'that a special mandate do go from this court 'to the said Superior Court, to carry this judgment into execution. The judgment was the 'same in the Butler case.

"Now, what did Georgia do on receipt of this 'special mandate? Through every department 'of her Government she treated the mandate and 'the writ of error with contempt the most profound. She did not even protest against jurisdiction, as she had done in the case of Chisholm's executors; but she kept Worcester and 'Butler in the penitentiary, and she executed, in 'the Creek nation, the laws, for violating which 'they had been put in the penitentiary." * * *

Judge Benning, in delivering his opinion, says further:

"It was not only in this case that Georgia occupied this position; she did it in two other 'cases, and those, cases of life and death: the 'case of Tassels, and that of Graves. One of 'these happened before these of Worcester and 'Butler, namely, in 1830; the other afterwards, 'in 1834. The Supreme Court had issued writs 'of error in each of these cases, on the application of the defendants to the State of Georgia; 'but, as the cases are not reported, it is to be 'presumed that these writs never got back to 'the Supreme Court; or that, if they ever did, 'it was too late. It is certain that Georgia hung 'the applicants for the writ."

In the Tassels case, the Legislature passed these, among other resolutions:

"'*Resolved*, That the State of Georgia will 'never so far compromit her sovereignty, as an 'independent State, as to become a party to the 'case sought to be made before the Supreme 'Court of the United States, by the writ in question.

"'*Resolved*, That his Excellency the Governor 'be, and he and every other officer of this State 'is hereby, requested and enjoined to disregard 'any and every mandate and process that has 'been, or shall be, served on him or them, purporting to proceed from the Chief Justice or 'any Associate Justice of the Supreme Court of 'the United States, for the purpose of arresting 'the execution of any of the criminal laws of 'this State.'

"Similar resolutions were passed, as to the 'case of Graves, by the Legislature of 1834."

I have read enough of that; but I will simply read one sentence from the heading of the decision, by the reporter. He says it was decided that—

"The Supreme Court of Georgia is coequal 'and co-ordinate with the Supreme Court of the 'United States; and therefore the latter cannot 'give the former an order, or make for it a precedent."

I do not stand here to controvert a single word of any of these sayings or doings; but I simply say that if the State of Wisconsin, through the judicial functions of her highest court, has, by her decisions, decided that a law of the United States is unconstitutional, I believe her court did not, in the delivery of that opinion, make it a solemn decision that they would treat

the Supreme Court of the United States with contempt the most profound. That is the way in which that court was treated elsewhere, and Georgia did not stand alone. In a letter written by a Senator from Georgia, Senator Troup—I have the letter by me, but I do not like to deal entirely in quotations—he wrote home to his people, assuring them that in their controversy with the Supreme Court the President was with them, and he recommended to them caution and moderation. So, sir, down from 1792, in the case of Chisholm's executors, up to 1854, the State of Georgia has always denied the authority of the Supreme Court of the United States to construe law for Georgia; and denied that it had any jurisdiction over the criminal laws of the State, and asserted that a law of Congress undertaking to give it that jurisdiction was unconstitutional.

Sir, I know something about the history of this United States court, and I know something of the history of parties in reference to it. I know that the war to which I have alluded, commenced by Jefferson and continued by Jackson, was carried on until the Democratic party triumphed and the court knocked under; and then, when they did that, when they came in with such decisions as party policy required of them, the party that had been fighting them this life-long battle became great sticklers for the dignity and binding authority of the Supreme Court of the United States.

I know the history of that court. I know how its appointments have been filled up; and I think that I can appeal to the candid judgment of my country when I say that the men who have been appointed there for the last thirty years, have been appointed more on account of their politics than their judicial learning or their legal reputation. As a general rule, you have sought politicians instead of lawyers to fill up that bench with. I know very well that you have sought men who were connected with the law, and had some sort of legal reputation, perhaps legal reputation enough to keep the whole country from crying out against the absurdity of the appointment; but I do not believe they have all come up even to that standard, and you have made it a political tribunal. You have warred against its independence. Year after year, generation after generation, you have denied its authority. You have proclaimed that every tribunal in the country might construe the Constitution for itself, and that every officer who took an oath to support it might do so. You have derided the authority of the Supreme Court of the United States. Now, having carried on this war, and having conquered, and the Supreme Court of the United States having come down from the high place which the Constitution assigned them, to work in your party harness, side by side with your caucuses, you are seized with a great reverence for them. Those who have that reverence may profess it. I confess, sir, that it is no pleasure to me to make this statement. I do it with pain; but it is the truth of history, and it is the truth of God, and it ought to be told; and I will tell it.

Again, sir, let me read what Mr. Buchanan said. He is at the head of the Government now; and here is the doctrine of Buchanan on the subject. Mr. Buchanan, in a speech which he made in the Senate July 7, 1841, which is to be found in the tenth volume of the Congressional Globe and Appendix, No. 2, page 163, used this language:

"But even if the judiciary had settled the 'question, I should never hold myself bound 'by their decision, whilst acting in a legislative 'character. Unlike the Senator from Massachu-'setts, [Mr. Bates,] I shall never consent to place 'the political rights and liberties of this people 'in the hands of any judicial tribunal. It was 'therefore with the utmost astonishment I heard 'the Senator declare, that he considered the ex-'positions of the Constitution by the judiciary to 'be equally binding upon us as the expositions 'of the moral law by the Saviour of mankind, 'contained in the Gospel, were upon Christians; 'and that these judicial expositions were of equal 'authority with the text of the Constitution. 'This, sir, is an infallibility which was never be-'fore claimed for any human tribunal; an infal-'libility which would convert freemen into abject 'slaves; an infallibility which would have ren-'dered the famous sedition law as sacred as the 'Constitution itself, the judiciary having decided 'this law to be constitutional; and which would 'thus have annihilated, throughout the whole 'extent of this Union, the liberty of the press 'and the freedom of speech. No, sir, no; it is 'not the genius of our institutions to consider 'mortal men as infallible.

"No man holds in higher estimation than I do 'the memory of Chief Justice Marshall; but I 'should never have consented to make even him 'the final arbiter between the Government and 'people of this country on questions of constitu-'tional liberty. The experience of all ages and 'countries has demonstrated that judges instinct-'ively lean towards the prerogatives of Govern-'ment; and it is notorious that the court, du-'ring the whole period which he presided over it, 'embracing so many years of its existence, has in-'clined towards the highest assertion of Federal 'power. That this has been done honestly and 'conscientiously, I entertain not a doubt."

That is Mr. Buchanan. Another high authority, a Mr. TOOMBS, of Georgia, a Representative of that State on the floor of the House of Representatives, in a speech which he made there, said:

"The only difficulty on this point has arisen 'from some decisions of the Supreme Court of 'the United States. It is true, they have talked 'vaguely about the doctrine of the general sov-'ereignty of the Federal Government. I attach 'but little importance to the political views of 'that tribunal. It is a safe depository of personal 'rights; but I believe there has been no assump-'tion of political power by this Government 'which it has not vindicated and found some-'where."

No assumption of political power which that court has not vindicated and found somewhere! Now, Mr. President, this being the fact of history,

that that court, as Mr. Buchanan says, instinctively leans to the prerogative of Government, and, as the Representative from Georgia says in the speech I have quoted, sustaining every assumption of political power, I choose to stand with the fathers of the faith, and take my position with Jefferson and Jackson; and I do not know that it is any harm to put Buchanan in, [laughter,] and stand with him, too, and with the views which they entertained of the Constitution.

Mr. President, let me say again, that I regret to be under the necessity of saying these things. If there was one single hereditary thing that I had, it was a reverence for courts. I confess that I had got rid of a little of it before I left home. I had a suspicion even in New Hampshire that judges were mortal and fallible. That has been growing and gaining on me constantly here; and the opinions of this Supreme Court upon political questions, to my mind, have no weight at all; and, notwithstanding the invocation which we have heard so many times, for us to vindicate our fidelity to the Constitution by our reverence for this tribunal, I cannot listen to the appeal. I believe that, in the position it now occupies, it is a dangerous department of this Government. I believe that its history has verified all, and more than all, that Jefferson ever prophesied of it; and I believe that its encroachments must be met; and if they will not be met by Congress, they must be met, as Jefferson said, by the action of the State Governments; and I thank the Senator from Georgia and the Supreme Court of Georgia for having promulgated the doctrine that the State Supreme Courts are not subordinate, but co-ordinate branches, and that there is no right to send a mandate from the Supreme Court of the United States to one of the State courts. I say, I thank them for that precedent; but, in saying that, I do not say that I would go to that extent; but I think it is a good thing that that decision has been made, and that it stands as an exposition of that high tribunal, of the manner in which they construe the Constitution. This decision of the State of Georgia has peculiar force, from the fact that it is nothing new; it is no new light; it has not sprung up out of any of the growing controversies of the day; but it dates back to the better days of the Republic. It goes back to 1792, and comes down to 1854; and you find that State occupying a uniform position on this subject; and I think it is a little unkind, a little out of place, for the State of Georgia to censure the State of Wisconsin, or any other State, for following in the tracks which she has so plainly and so clearly indicated.

But, sir, the State of Georgia does not stand alone upon this subject. There are some other decisions on the same subject which I will thank my friend from Wisconsin to read for me on this occasion.

Mr. DOOLITTLE. I read from 3 Dallas's Reports a decision of the Supreme Court of Pennsylvania, decided in 1788, in which this question was discussed and decided. The Chief Justice, delivering the unanimous opinion of the court, used the following language:

"The divisions of power between the National, 'Federal, and State Governments, (all derived 'from the same source, the authority of the 'people,) must be collected from the Constitu-'tion of the *United States*. Before it was adopt-'ed, the several States had absolute and unlim-'ited sovereignty within their respective bound-'aries; all the powers, legislative, executive, 'and judicial, excepting those granted to Con-'gress under the old Constitution. They now 'enjoy them all, excepting such as are granted 'to the Government of the *United States* by the 'present instrument and the adopted amend-'ments, which are for particular purposes only. 'The Government of the *United States* forms a 'part of the Government of each State; its ju-'risdiction extends to the providing for the com-'mon defence against exterior injuries and vio-'lence, the regulation of commerce and other 'matters especially enumerated in the Constitu-'tion; all other powers remain in the individual 'States, comprehending the interior and other 'concerns; these combined form one complete 'Government. Should there be any defect in 'this form of Government, or any collision oc-'cur, it cannot be remedied by the sole act of 'the Congress, or of a State; the people must 'be resorted to, for enlargement or modification. 'If a State should differ with the *United States* 'about the construction of them, there is no 'common umpire but the people, who should 'adjust the affair by making amendments in the 'constitutional way, or suffer from the defect. 'In such a case, the Constitution of the *United* '*States* is Federal; it is a league or treaty made 'by the individual States as one party, and all 'the States as another party. When two na-'tions differ about the meaning of any clause, 'sentence, or word, in a treaty, neither has an 'exclusive right to decide it; they endeavor to 'adjust the matter by negotiation; but if it can-'not be thus accomplished, each has a right to 'retain its own interpretation, until a reference 'be had to the mediation of other nations, and 'arbitration, or the fate of war. There is no 'provision in the Constitution that in such a 'case the judges of the Supreme Court of the '*United States* shall control and be conclusive; 'neither can the Congress by a law confer that 'power."—*Respublica* vs. *Cobbett*, 3 *Dallas's Reports*, page 475.

I read, also, from the 4th volume of Munford's Reports "of cases argued and determined in the Supreme Court of Appeals of Virginia," from a case decided in 1814—the case of Hunter *vs.* Martin, devisee of Faixfax:

"Soon after the case of Hunter *vs.* Fairfax's 'devisee (reported in 1 Munf., 218—238) was de-'cided, the appellee, Martin, obtained a writ of 'error from the Supreme Court of the United 'States, requiring the Court of Appeals of Vir-'ginia to certify the record for re-examination 'by that court."

The Supreme Court of the United States reversed that decision, and sent back the record, with a mandate, to the Court of Appeals of Virginia, requiring them to conform to its decision.

After being fully argued, the court entered the following unanimous opinion:

"The court is unanimously of opinion that the 'appellate power of the Supreme Court of the 'United States does not extend to this court, 'under a sound construction of the Constitution 'of the United States; that so much of the 'twenty-fifth section of the act of Congress to 'establish the judicial courts of the United 'States as extends to the appellate jurisdiction 'of the Supreme Court to this court is not in pursuance of the Constitution of the United States; 'that the writ of error in this case was improvidently allowed under the authority of that act; 'that the proceedings thereon in the Supreme 'Court were *coram non judice* in relation to this 'court; and that obedience to its mandate be 'declined by this court."

Mr. HALE. I trust, sir, that enough of authority on this subject has been quoted, and I leave that branch of the case. I propose now to address myself to another count in the indictment against the free States, and that is:

"I charge it [the Republican party] with 'openly attempting to deprive the people of the 'slaveholding States of their equal enjoyment of, 'and equal rights in, the common Territories of 'the United States, as expounded by the Supreme 'Court, and of seeking to get control of the Federal Government, with the intent to enable it to 'accomplish this result by the overthrow of the 'Federal judiciary."

Now, I apprehend that here is the whole real difficulty at issue. It is what is called the territorial question, or the rights of the people of the several States in the Territories. The complaint is constantly made, that we seek to exclude, by the action of the General Government, several of the confederate States from an equal enjoyment in the common Territories of the Union. How do we seek to exclude them? We do not propose to make any law that we are not willing to abide by ourselves. We do not ask any such law. Every law that we seek, every doctrine we proclaim, is general. We do not propose one law for a Northern State and another for a Southern; but every right that you give to a citizen of my State, we propose to give to the citizens of every State; and the general law which we ask Congress to pass, we ask them to pass for the whole Union, and for all the citizens of every State. But, sir, it is just as well to meet the question fairly, and not undertake to evade it by any general propositions. Several of these States are slaveholding States, and they contend that slaves are property, and that they have a right to protection for slave property in the Territories; and if we do not give them protection to the slave property in the Territories, they say the Constitution is violated. This is the second charge in the indictment against the free States. Now, let us say a word about that. The honorable Senator from Texas, [Mr. WIGFALL] and I thank him for the position he has taken, for it calls to my mind a sentence of his which I propose to read, which I think spoke more truth than he was aware of, when he said:

"I am one of those who believe that all the 'difficulties that this country labors under arise 'from a misapprehension—I say it with great 'deference, but I really believe it—a misapprehension of some of the most distinguished men 'that this country has ever produced, as to the 'form of government under which we are living."

I am not going to repeat the illustration of that which the honorable Senator gave, because I think, as the honorable Senator from Arkansas [Mr. JOHNSON] said of me, that that was a suggestion which came rather from his wit than his judgment. But, sir, there is great truth in it. There is a misapprehension, and a great and fundamental misapprehension, as to the character of the Government under which we live, by many of the first men of this country, or that think themselves so. I gather the evidence of that fact from the flippant manner in which I hear disunion talked of, and threatened and referred to over and over and over again, as familiarly as any of the ordinary transactions of daily life. That is nothing new. It is old. Why, sir, since I have had the honor of a seat on this floor, I have actually heard it declared, that if the Senate did not take up bill No. 85, instead of bill No. 35, serious consequences would ensue to this Union. Yes, sir, the duration of this great and gigantic Government depended on the order in which the Senate went to its business on the Calendar. I have heard that on this floor, and it has got to be constantly referred to as one of the things that is very likely to happen, and to happen very soon; and gentlemen speak of it as an occurrence that is neither to be very seriously deprecated, nor that is to excite any very serious consequences; and it is intimated that if the Union was dissolved, these gentlemen could make a better one to-morrow. That is substantially the spirit in which this Union is spoken of, and has been here during this whole session, in this body and in the other. I do not, of course, pretend to quote words. Therefore, I think, with the honorable Senator from Texas, that there is a very great misapprehension as to the character of this Government. What is this Government? What is this Union? A thing of to-day? Did it spring up in the night, like Jonah's gourd, and is it to perish with the morning's sun? Is it one of those ephemeral creations which spring up without cause, and endure for a given time and pass away, and leave no mark on the history of ages? Is that the character of our Government? It would seem so; and there was great propriety in the remark which fell from the honorable Senator from Texas, that gentlemen do misapprehend it. What is it? Why, sir, the imagination of man cannot compass it. I look upon this Government and this Union and this Constitution as the consummation of the education of the race by a beneficent Providence, through all the ages that are past. I look upon this Government to-day, occupying that little space called the present, between the eternities of the past and the future, and living to-day as the result of all the past. I look upon it, sir, as a consummation which a good God, by six thousand years of discipline, has brought humanity to. I look upon

it as the result and the fruit of all the past. I do not believe that there has ever been a battle-field, in which the banner of liberty has been unfurled and the friends of liberty have fought, whether favorable or adverse fortunes have been their destiny, but what we are to-day living in the enjoyment of the consequences resulting in part from that combat. No, sir; in all the bloody past, not a scaffold upon which the patriot has poured out his blood, not a sacrifice that patriotism has ever made, not a prayer that piety has ever breathed, that is not exerting its influence to-day in the civil and political condition of this people. Sir, the history of the world has been full of revolutions. Ours was *the* Revolution. Ours was the culmination of that Christianity whose first public lesson was deliverance to the captive, and the opening of the prison-doors to the bound.

That, sir, is our situation. That is our Government. Other nations have had revolutions. Borne down by the intolerable weight of oppression, they have risen in the energy of despair, and thrown off one tyrant, only that another might come and take his place; and it would seem as if, in all the past, in the history of human government, in the history of the great efforts that had been made for the installation of human liberty in organized forms of government, nothing but failure had been the history of mankind; and that, at last, in the fullness of time, when the purposes of Divine benevolence were to be tried, to solve for the last time the problem, whether man was capable of self-government, the eye of science discovered, in the solitudes of ocean, this continent to which our Pilgrim Fathers came, that, removed from the temptations and trials of the Old World, they might here, on permanent and stable foundations, lay another foundation of the temple of Liberty, and rear upon it its superstructure, where the victims of oppression from all the earth might enter, and be at rest. Aye, sir, and on their battle-fields they lighted the beacon-fires of liberty which now shine to lighten the victims of despotism the world over. You propose now to put out these everlasting lights which your fathers lighted. You propose to let darkness rest upon the prospect of this glorious Union, and think that to-morrow you can rear a better structure, and send out a more benign influence to the nations than your fathers have done before you!

I am not of that way of thinking; I do not believe a word of it; and I will say here what I have said to my people at home, that if I did not believe the great mass of this people understood the nature of their Government better, had more intelligence and more patriotism than the men whom they have sent to represent them—I speak not of the present, but as a general fact—if the intelligence, and integrity, and virtue, of the great mass of this people did not exceed that of the Government, I should despair of the duration of this Union; I should think that it would dissolve, and that it ought to be dissolved.

Now, sir, in regard to this territorial question; suppose that the General Government, by its action, were to declare that there should not be a slave on the territory belonging to the United States, you say that would be cause of dissolution. That was just exactly the Union which our fathers made for us; just exactly the compact which they enacted before the Constitution was formed; and this was done under the lead of a man whose opinions, it is said, were of such a character, that it is audacity in those of us who sit on this side of the Chamber to claim him as being of our faith. Before I go to this territorial question, I want to say a few words as to Jefferson's opinions, and upon this point we are not compelled to grope in the dark. I know that an honorable Senator from Georgia, the one to whom I have been replying, has quoted once, and more than once, on a former occasion, a letter of Mr. Jefferson, written to Mr. Holmes; and in the speech of the honorable Senator, with reference to that, he uses language which I will quote. The honorable Senator says, speaking of Mr. Jefferson:

"Jefferson was alive when the eighth section
'of the act of 1820 was before the American
'Congress. He spoke for himself. In the face
'of your constant declarations—cold, calcula-
'ting, willful misreprentations of him—hear him
'speak for himself. I thunder it in your ears.
'I would to God my voice could reach those
'whom you deceive and betray."

The honorable Senator has a powerful voice; mine is but a feeble one; but I will lend him my voice to aid him; and I would that I could thunder this letter into the ears of every man, woman, and child, in this country. I did not know, from hearing this letter so often referred to, but that there might be something in it that would be found to be inconsistent with the early faith of Mr. Jefferson. It was written in 1820. He was then seventy-seven years old—threescore and ten, and past; and that fourscore, which the inspired penman tells us is feebleness, he had long entered upon; and I did not know but that there might have been something, when the evening shadows of life were upon him, that might have been inconsistent with his early faith; and I had determined, if it were so, upon this line of argument; I would have said, I will take the Jefferson of the Revolution; I will take him in the morning of his life, in the maturity of his manhood; I will take him as the apostle and prophet of the Revolution; I will listen to him as he stood like the prophet on the mount, catching the electric fire of heaven, and pouring it out in articulate thunder in the ears of an astonished world, in the sublime truths of the Declaration of American Independence. But when I came to look at this letter, I found that his fire had not grown dim. The same sentiments which had animated him in his earliest days, the same sentiments which were the guiding policy of his administration as President of the United States, still shone forth in this famous letter to John Holmes, which the honorable Senator wants to thunder so far. I do not think that thunder would alarm anybody—certainly not on this side of the Chamber. I will read an extract from that letter. What Jefferson was against, in this letter to John Holmes, was a geographical line; but

he exhibited the same hostility to slavery that he ever manifested. Let me read his letter:

"A geographical line, coinciding with a mark-
'ed principle, moral and political, once con-
'ceived and held up to the angry passions of
'men, will never be obliterated; and every new
'irritation will mark it deeper and deeper. I
'can say, with conscious truth, that there is not
'a man on earth who would sacrifice more than
'I would to relieve us from this heavy reproach,
'in any *practicable* way. The cession of that
'kind of property, for so it is misnamed—[It is
'misnamed property, says Jefferson in this let-
'ter]—is a bagatelle which would not cost me a
'second thought, if in that way a general
'emancipation and *expatriation* could be effected;
'and gradually, and with due sacrifices, I think
'it might be."

There are the sentiments of Jefferson, in 1820, when he was seventy-seven years old. Talk, said Jefferson, about property in slaves; it is a misnomer. The purpose of his heart is, that a general emancipation and expatriation may take place. That was the language of Jefferson in 1820. We all know what Jefferson's sentiments were when he penned the Declaration of Independence. It did not read there that "all white men are created" so and so; but "all men." "We hold these truths to be self-evident." They were not capable of demonstration; they were not the result of any previous premises or positions; they were eternal, self-evident axioms, that were not to be argued; and those were, that all men were endowed by their Creator with the inalienable right to life, liberty, and the pursuit of happiness. Jefferson did not base the right of man to liberty on anything that had been said by anybody; on any essay that had been written; on any battle that had been fought; on any theory of philosophy that had been broached; he stopped nothing short of the throne of God, and declared that all men were entitled to the right of life and liberty, because they were endowed with that right by their Creator.

What were his sentiments afterwards? The war of the Revolution was over. Victory had crowned his efforts; he had penned this Declaration, and he said he had pledged his life and fortune and honor to the maintenance and vindication of the sentiments which had there been avowed. Peace took place in 1783. In 1784, we find Jefferson in Congress, and one of "a committee, consisting of Mr. Jefferson of Virginia, Mr. Chase of Maryland, and Mr. Howell of Rhode Island, to submit to Congress a plan for the temporary government of the western territory," and he says that "the territory ceded or to be ceded," all that we have got, all that we shall acquire hereafter, "shall be governed" by a certain ordinance which they reported, and among its provisions was that, after the year 1800 of the Christian era, there should be neither slavery nor involuntary servitude in any of the States that were to be made out of this territory.

That was the position of Jefferson in 1784. It is said that he did not embody these views in the Constitution. Well, sir, we find him subsequently as President of the United States; and what did he do then? Remember that the ordinance of 1787 had been reaffirmed by the First Congress that assembled under the Constitution, George Washington himself being the President of the United States, and it was approved by him. In 1805, the Territory of Michigan was formed by a law entitled "An act to divide the Indiana Territory into two separate Governments;" and the second section is as follows:

"There shall be established within the said
'Territory, a Government in all respects similar
'to that provided by the ordinance of Congress,
'passed on the 13th day of July, 1787, for the
'government of the territory of the United States
'northwest of the river Ohio."—*Statutes at Large*,
'vol. 2, p. 309.

Jefferson, on the 11th January, 1805, approved that anti-slavery ordinance. In the same volume, on page 515, is to be found another act bearing also the approval of Mr. Jefferson, of February 3, 1809. That was an act for dividing the Indiana Territory into two separate Governments, and constituting the Territory of Illinois; and in the second section of the act there was the same provision:

"SEC. 2. *And be it further enacted*, That there
'shall be established within the said Territory a
'Government in all respects similar to that pro-
'vided by the ordinance of Congress, passed on
'the 13th day of July, 1787, for the government
'of the territory of the United States northwest
'of the river Ohio."

A similar act was passed for the Territory of Indiana, on the 7th of May, 1800, John Adams being President. On the 20th of April, 1836, the Territory of Wisconsin was organized, and exactly the same provison was put in that:

"That the inhabitants of the said Territory
'shall be entitled to, and enjoy, all and singular
'the rights, privileges, and advantages, granted
'and secured to the people of the territory of the
'United States northwest of the river Ohio, by
'the articles of the compact contained in the or-
'dinance for the government of said territory,
'passed on the 13th day of July, 1787; and shall
'be subject to all the conditions and restrictions
'and prohibitions in said articles of compact im-
'posed upon the people of the said territory."—
Statutes at Large, vol. 5, p. 15.

That act was passed on the 20th of April, 1836, General Jackson being President of the United States; and this has been the law that has been in existence since the adoption of the Federal Constitution, unchallenged by anybody, so far as I know, and so far as I have been able to see, until the famous decision in the Dred Scott case, or rather until the repeal of the Missouri compromise by the Nebraska bill, in 1854. This principle, which the court decided to be unconstitutional, was sanctioned by Washington, by Jefferson, by Adams, by Jackson; and I think you may look at the Journals of Congress in vain to find that, in a single instance, any man ever questioned the constitutionality of that legislation. Nay, sir, I doubt, if you were to go through the insane asylums of this land, whether, prior to 1854, you could even find a patient in Bedlam

crazy enough to question the constitutionality of the enactment of this provision, which had been so quietly and so uniformly incorporated into the legislation of the country, receiving the sanction of the names which it does upon the statutes which are now part of the records of this Government; and I think it required an extraordinary degree of arrogance and presumption in the Supreme Court of the United States to come forward, at this late day, and say that all the fathers of the Republic, all the framers of the Constitution, all the men who fought the battles of liberty, and who laid the foundations of our institutions, did not know anything about what the Constitution meant, and that, in 1854, for the first time, the true construction of the Constitution on this subject was found out.

Sir, it is difficult to say what may be the result of this controversy here, what may be the result of its action before the tribunal of this Senate and of the other House; but before that tribunal where we must all stand, before that tribunal which pronounces its edicts that nations as well as individuals must obey, and that is the enlightened public sentiment of the world, there can be no shadow of a doubt. If this fabric of our liberties is to fall and become a shapeless mass of ruins, I desire to vindicate the State which I in part represent, I desire to vindicate the political party with which I act from any reproach in this matter; for, sir, I have no doubt that if you could by any possibility succeed, and this Union should be dissolved, terrible would be the indignation of the world, of our own times and of coming ages, upon the party that should be guilty, in the remotest degree, of having aided or accelerated so terrible a catastrophe.

Sir, by the judgment of that tribunal I have no doubt we can stand. Standing upon these landmarks, standing upon the history of our legislation, standing upon the judicial decisions of this court in its earlier and its better days, we can vindicate before our own constituents, we can vindicate before the enlightened public opinion of the world, before posterity and Heaven, before earth and before the final tribunal of all nations, as individuals, the integrity of our position when we stand where the fathers of the Republic stood in enacting the prohibition which you now complain of as so unjust, and as excluding you from your fair share of the public territory and public property. No, sir; this issue is safe. The verdict of posterity cannot be wrong. The judgment of an enlightened public sentiment will be heard, and it will be pronounced, and you cannot deride it.

I have no threats to utter. I have no denunciations to make. I stand as the representative of a State that claims to be observant of the Constitution. I stand here a representative of a State that stands before the tribunal of public opinion, and claims a judgment of not guilty of any charge of want of fidelity or integrity in the manner in which it has executed and discharged the duties that rest upon it. I stand here as a citizen of the United States. I stand here to-day, and speak for my country, and the whole country; I speak for the Constitution and the Union; I speak for the oppressed of earth; I speak for those who, in other lands, are looking to the light of our example, as something that shall guide them through the mazes and intricacies of that despotism under which they have groaned for ages; and I say to you, sir, that any fratricidal hand that is raised against the integrity of this Government and this Union commits a crime, not only against the Constitution, not only against the country, but a crime against humanity—a sacrilege against God, whose great experiment, for the education of mankind in the high science of self-government, is being here illustrated and demonstrated by the light of our example.